



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

ELP
Docket No. 418-02
24 May 2002

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) 10 U.S.C.1552

Encl: (1) DD Form 149 w/attachments
(2) Case Summary
(3) Subject's Naval Record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Navy applied to this Board requesting, in effect, that his naval record be corrected by upgrading the discharge under other than honorable conditions issued on 1 July 1986.

2. The Board, consisting of Messrs. Tew, Frankfurt and Carlsen, reviewed Petitioner's allegations of error and injustice on 22 May 2002 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although it appears that Petitioner's application to the Board was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner enlisted in the Marine Corps on 25 May 1984 for three years at age 17. He was advanced to private first class (PFC) and served without incident until 25 April 1985 when he received nonjudicial punishment (NJP) for use of marijuana and a 12 day period of unauthorized absence (UA). Punishment imposed was 21 days of correctional custody, forfeitures of \$310 per month for two months, and reduction in rank to private (PVT).

d. Petitioner was again advanced to PFC and served without further incident until 8 January 1986 when he received a second NJP for use of marijuana. Punishment imposed was reduction in rank to PVT, forfeiture of \$318 per month for two months, and 45 days of restriction and extra duty.

e. On 19 February 1986 Petitioner was notified that action was being initiated to separate him under other than honorable conditions by reason of misconduct due to drug abuse. He was advised of his procedural rights, consulted with legal counsel, and waived his right to an administrative discharge board (ADB). Thereafter, the commanding officer recommended discharge under other than honorable conditions. On 23 April 1986 the discharge authority directed discharge under other than honorable conditions by reason of misconduct due to drug abuse. Petitioner was so discharged on 1 July 1986. Since Petitioner was unavailable to sign his DD Form 214, it appears that it was issued sometime after he was separated. The date of issuance cannot be determined.

f. The record reflects three entries on Petitioner's page 12 (Offenses and Punishments), made subsequent to his discharge, state that he was reported in an unauthorized absence (UA) status on 3 October 1986 and declared a deserter on 3 November 1986, and that a DD Form 553 (Absentee Wanted By the Armed Forces) was published on 7 December 1986. The record also contains a letter to Petitioner's parents on 13 October 1986 informing them that he was UA, and a charge sheet preferring charges on 4 November 1986 for the UA beginning on 3 October 1986.

g. Petitioner states that he tested positive for marijuana for the offense that resulted in the first NJP. With regard to the second NJP, he claims that a week after the first urinalysis, he was tested and came up negative, but this fact was not considered in reviewing his case. He argues that if he

tested positive, the retest should also have been positive, since marijuana stays in your system for about 30 days. He also claims that five years after his discharge, he was apprehended as a deserter and it took another five years to get his discharge papers.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial favorable action. The three page 12 entries in Petitioner's record stating that he was unauthorized absentee and was later declared a deserter, the letter to his parents, and a charge sheet were erroneously entered after his discharge. The Board thus concludes that it would appropriate and just to remove these entries, the letter to his parents, and the charge sheet from the record.

The Board was not persuaded by Petitioner's argument that the urinalysis which led to his second NJP and discharge must have been a mistake since he tested negative on a second urinalysis. Petitioner provides no evidence in support of his claim. The Board believes that two NJPs for using marijuana within an eight month period demonstrated Petitioner's willful disregard for Marine Corps' zero tolerance policy for drugs. The Board therefore concludes that the discharge was proper and no change is warranted.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing from the record the page 12 entries of 3 October 1986, 3 November 1986, and 8 December 1986; the letter of 13 October 1986 to Petitioner's parents; and the charge sheet of 4 November 1986.

b. That no further relief be granted.

c. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

d. That any material directed to be removed from Petitioner's naval record be returned to the Board, together

with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross references being made part of Petitioner's naval record.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6 (e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6 (e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER
Executive Director